

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

ANTONIA MARIE LORENZO-PRICE,

Debtor.

Case No. 03-43906
Chapter 13
Hon. Marci B. McIvor

OPINION GRANTING IN PART AND DENYING IN PART TRUSTEE'S AND DEBTOR'S
OBJECTION TO ROBERT STEIN'S FIRST APPLICATION FOR APPROVAL OF
PAYMENT OF POST-CONFIRMATION ATTORNEY FEES

This matter came before the Court on the Trustee's and Debtor's Objections to Robert Stein's First Application for Approval of Payment of Post-Confirmation Attorney Fees. The Trustee and Debtor object to the fee application on the grounds that specific time entries are excessive and unreasonable under 11 U.S.C. § 330 in light of the services rendered and lack of benefit to the estate, that Stein's hourly rate is excessive, that the amount billed for preparation of the fee application is excessive, and that it is unclear whether the fee application was properly served on all interested parties. Having fully reviewed the file, the Application, and the Objections thereto, the Court GRANTS IN PART and DENIES IN PART the objections and awards attorney fees in the amount of \$800.00 and costs in the amount of \$106.74, for a total award of \$906.74.

I.

FACTS

Debtor Antonia Marie Lorenzo-Price filed a Chapter 13 bankruptcy petition on

February 12, 2003. On March 3, 2003, a chapter 13 plan was proposed and, subsequently modified. On May 9, 2003, Debtor's chapter 13 plan was confirmed. On September 29, 2003, Debtor filed a motion to sell real estate free and clear of liens. On October 10, 2003, the Trustee filed an objection to Debtor's motion. On November 20, 2003, the parties entered into a stipulated order granting Debtor's motion to sell real estate free and clear of liens. On September 23, 2004, Debtor modified her plan.

On November 1, 2005, Debtor hired Michael Greiner in the place of Robert Stein. Stein consented to Debtor's motion to allow substitution of counsel.

On November 11, 2005, Stein filed his First Application for Approval of Payment of Post-Confirmation Attorney Fees for the dates May 10, 2003 through November 7, 2005. The Application seeks attorney fees in the amount of \$5,304.50 and costs in the amount of \$106.74, for a total award of \$5,411.24.

On November 21, 2005, Debtor filed objections to the fee application. Debtor objected to the fees on the grounds that: (1) the fees are not reasonable; and (2) the services provided were not necessary. On November 22, 2005, the Trustee filed objections to the fee application. The Trustee objects to the fees on the grounds that: (1) the overall fees requested are unreasonable in light of the services rendered and results achieved (Trustee's objection, ¶ 1); (2) there has been no benefit to the estate from the services rendered (Trustee's objection, ¶ 2); (3) the attorney's hourly rate of \$200.00 per hour is unreasonable (Trustee's objection, ¶ 3); (4) the fees requested for specific duties performed are excessive (Trustee's objection, ¶¶ 4-7); and (5) it is unclear whether this fee application was properly noticed to all interested parties (Trustee's objection, ¶ 8).

A hearing on the Fee Application was held on January 26, 2006.

II.

ANALYSIS

A. Jurisdiction

This is a core proceeding under 28 U.S.C. § 28 U.S.C. 157(b)(2)(A), over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

B. Standard for Awarding Fees

The Bankruptcy Code, 11 U.S.C. § 330(a), codifies the criteria for evaluating fee requests. Section 330(a) states, in part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

* * *

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991). The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual,

necessary services. The Court may “then determine whether a global reduction or enhancement of the fees is in order.” *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993). The ability to review fee applications in the context of each individual case “permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration.” *Allied Computer Repair, Inc.*, 202 B.R. at 884-85.

Courts have used many factors to analyze the number of hours which constitute a “reasonable number of hours.” The factors most often included by courts in their analysis are: 1) the nature of the services rendered; 2) the difficulties and complexities encountered; 3) the results achieved; 4) the size of the estate and the burden it can safely bear; 5) the duplication of services; 6) professional standing, ability, and experience of the applicant; 7) fairness to each applicant; and 8) the cost of comparable services other than for a bankruptcy case. *In re General Oil Distributors, Inc.*, 51 B. R. 794 (E.D. N.Y. 1985). The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

Bankruptcy attorneys are not entitled to compensation merely because time recorded was actually expended. *In re Allied Computer Repair, Inc.*, 202 B.R. 877, 886 (Bankr. W.D. Ky. 1996). The purpose of bankruptcy is not to serve as a fund for payment of professional fees. Instead, the purpose is to maximize the estate for distribution to creditors. “Attorneys must be disabused of the erroneous notion that they are entitled to

compensation as long as the time recorded was actually expended.” *Allied Computer Repair* 202 B.R. at 886. Every dollar spent on legal fees results in a dollar less that is available to creditors. *Id.* Attorneys should use “billing judgment” and make a good faith effort to “eliminate unproductive time or to reduce hours on productive projects where the total amount billed would be unreasonable in relation to the economic value of the matter in question.” *In re Atwell*, 148 B.R. 483, 490-492 (W.D. Ky. 1993)(billing judgment applicable in determining both the hourly rate and number of billable hours).

C. Standard as Applied to this Case

In this case, the Trustee objects to the hourly rate charged by Debtor’s attorney asserting that the rate is excessive. Bankruptcy attorneys are generally entitled to an hourly fee in line with the prevailing market rates in the community. *In re ACT Manufacturing*, 281 B.R. 468, 486 (Bankr. D. Mass. 2002) (“[T]he Court should apply the rate customarily charged for similar services in the locality...”). The Court may, itself, determine the prevailing market rate in the community and thus evaluate the reasonableness of the attorneys’ hourly rates. *In re Computer Learning Centers*, 285 B.R. 191, 227 (Bankr. E.D. Va., 2002). “The court is in an excellent position to evaluate the prevailing market rate for attorney’s fees by virtue of the innumerable fee applications presented to [it] . . . The very number of applications provides an exceptional view of the breadth and depth of the legal community and the fees charged . . .” *Id.*

In this case, Debtor’s Counsel charges \$200 per hour. While that hourly rate is not

inherently unreasonable for an experienced and competent lawyer in the Chapter 13 context, it is a high rate and carries with it a responsibility to be extremely efficient. That being said, this Court approves Stein's \$200/hour hourly rate, but will apply a high standard for efficiency that such an hourly rate requires.

After reviewing the fee application, this Court finds that Stein performed two compensable tasks for Debtor post-confirmation, those being the preparation and the entry of a Stipulated Order to Sell Real Estate, and the modification of Debtor's plan. This Court finds that, for an attorney that merits a rate of \$200.00 per hour, those tasks should have taken four hours. Therefore, this Court grants Stein compensation for four hours worth of fees at a rate of \$200/hour for a total fee award in the amount of \$800.00. Additionally, this Court awards the payment of costs in the amount of \$106.74 because those costs appear to relate to the above-referenced compensable tasks.

III.

CONCLUSION

For the reasons stated above, the Court GRANTS IN PART and DENIES IN PART the objections and awards attorney fees in the amount of \$800.00 and costs in the amount of \$106.74, for a total award of \$906.74.

Entered: February 15, 2006

/s/ Marci B. McIvor

Marci B. McIvor
United States Bankruptcy Judge